IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 397 OF 2002
AND
CIVIL APPLICATION NO. 529 OF 2002

Shri Dagadu Laxman Yadav
and ors. ..Appellants

Vs.

Shri Mahadev Vishnupant Gurav
and ors. ..Respondents

WITH
SECOND APPEAL NO. 503 OF 2002
AND
CIVIL APPLICATION NO. 709 OF 2001

Shri Shankar Vithu Yadav
since deceased through his heirs
Shri Saheb Shankar Yadav and ors. ..Appellants

Vs.

Shri Mahadev Vishnupant Gurav
and ors. ..Respondents

Mr. V.G. Mujumdar for appellants.
Mrs.S.A. Mudbidri for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : June 18, 2007.

P.C.:

1. Heard Mr.Mujumdar the learned counsel for the appellants, who are original defendants. Regular Civil Suit No.210 of 1984 was filed by the plaintiffs

against the tenant i.e. Shankar Vithu Yadav who died during the pendency of the suit and, therefore, eight of his LRs were brought on record. RCS No. 211 of 1984 was filed by the plaintiffs against four other tenants i.e. Dagadu Laxman Yadav, Nivrutti Laxman Yadav, Ankush Laxman Yadav and Shankar Dhondiba Gadekar. In the first suit an amount of Rs.900/- was claimed towards the rent and an amount of Rs.1200/- was claimed towards rent in the second suit. In both the suits the plaintiffs had claimed for relief of possession and mesne profits. In RCS No. 210/84 the original defendant filed his written statement at exh.12 and stated that the suit was not maintainable on the ground that prior permission of the Charity Commissioner was not obtained and there was non-joinder of necessary party in as much as the trustees of the Devasthan Trust were not impleaded as necessary parties. In RCS No. 211/84 the defendant no.1 had filed written statement at Exh.16 and adopted the same contentions as were raised in RCS No.210/84, whereas defendant nos.2 and 3 did not file any reply but filed the pursis adopting the written statement filed by defendant no.1.

2. The learned Judge of the trial court dismissed both the suits by his common Judgment and order dated 9/12/1994 and held that the suit was not maintainable for non joinder of party in as much as the trustees were not impleaded as necessary parties. The plaintiffs, therefore, filed two separate appeals i.e. Regular Civil Appeal Nos.148 and 149 of 1995 and by a common Judgment and Order dated 6/4/2000 the learned 13th Addl. District Judge, Pune was pleased to allow both the appeals by setting aside the Judgment and Decree passed by the trial court. The tenants have been directed to hand over the possession of the suit land to the plaintiffs within six months and it was further declared that they are entitled to recover mesne profits of the suit lands from the date of the suit till the possession of the suit lands is recovered. The common decree passed by the Lower Appellate Court is a subject matter of challenge in these two second appeals and it is thus obvious that during last seven years or so they are waiting for admission.

3. The Lower Appellate Court has referred to the following judgments of the Supreme Court and held that the suits filed by the plaintiffs did not suffer from non joinder of parties:-

(a) Bishwanath and anr. vs. Sri Thakur Radha Ballabhji and ors. [AIR 1967 SC 1044].

(b) Atyam Veerraju and ors. vs. Pechetti Venkanna and ors. [AIR 1966 SC 629].

4. The facts of this case, which are not disputed, do show that the suit property was an agricultural land owned by Bhargavram Deosthan Dhavadshi Satara and the lands were granted by the Government to the religious endowment. The said deity was holding landed property as well as other properties at village Malshiras, Taluka Purandar and also at other places. The then Government had appointed working committee for the management of the properties of the deity. The suit lands are Inam lands. As per the documents at Exhs.28 and 29 from

the time of Peshavas and British Government the managing committee was entitled only to recover the revenue and the rent of the suit land from the actual occupiers. The 7x12 extract were placed on record for the year 1930-31 onwards and the plaintiffs were shown as landlords and the defendants as the tenants. Exh.67 was the document pertaining to the year 1953 and it showed that the plaintiffs were the occupiers of the suit land. Same was the case in the document at Exh.88 of the year 1915 which showed that the plaintiffs were the occupiers of the suit land. From the documents at Exhs.21 and 22 it was noted that the plaintiffs had ascertained right and title as permanent holders to the suit land before the Charity Commissioner. Thus, the plaintiffs were in possession of the suit land as permanent holders. The trust was registered on 28/8/1953 and the Deosthan properties were to be managed by the managing trustees. The registration of the trust did not change the status of the plaintiffs and the defendants who were the tenants of the suit land through the plaintiffs, which fact is not disputed by any of the parties. In RCS No.210/84 at Exh.19 was a copy of the order passed by the

Agricultural Lands Tribunal on 7/5/1964 and by the said order it was held that the plaintiffs were the landlords and defendants were the tenants but as the certificate under Section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948 was obtained, the proceedings under Section 32 of the said Act were dropped.

5. This documentary proof brought on record went to show that the plaintiffs are the permanent holders of the suit land and were liable to pay certain amount to the trustees/Deosthan and in return it was their duty to look after the up keep of the deity. It was their right to derive income from the suit lands and use certain amount from the same for the up keep of the deity and to pay the fixed amount to the trustees. The Lower Appellate Court, therefore, noted that the plaintiffs were the persons who were entitled to hold the suit land on behalf of the deity or religious endowment permanently and, therefore, they could very well file the suit against the defendants for seeking possession of the suit land and the suit land being the tenanted land it was not necessary to obtain

permission from the Charity Commissioner to file the suit, as was also held by the trial court. The plaintiffs had terminated the tenancy of the defendants by issuing notice dated 26/9/1983 at the end of March, 1984. The plaintiffs have claimed rent in both the suits for the years 1981-82 to 1983-84. In RCS No.211 of 1984 the plaintiff no.1 i.e. Mahadeo Vishnupant Gurav was examined at Exh.15. He admitted that the suit lands are the trust properties and in the cross-examination he stated that none of the plaintiffs were the trustees of the Bhargavram Devasthan Trust. He also admitted that he did not obtain the permission of the trust or the trustees for filing the suit. The record, therefore, shows that RCS Nos. 210 and 211 of 1984 were not filed by the trust or against the trust. These suits were filed by the permanent holders of the land and the plaintiffs sought possession of the said land from the tenants along with the mesne profits as well as arrears of rent. The dispute was between the permanent holders and the tenants of the land. Under these circumstances, it could not be said that the suits were defective for non joinder of parties. The Lower

Appellate Court rightly considered the factual position and the subject matter of the suit as well as the respective parties. The plaintiffs' relief was not against the trust or the Devashtan and the plaintiffs had sought, as noted earlier, the possession of the tenanted lands from the tenants. Under these circumstances, the contentions of Mr.Mujumdar that the suits were not maintainable as the trustees were not impleaded in the said proceedings cannot be accepted. The defendants appear to have contended in their statement that the plaintiffs or some of them were the managing trustees of the trust and this contention was factually erroneous.

6. No substantial question of law, therefore, arises for consideration in these two second appeals and, therefore, they must fail at the threshold.

7. Consequently, the appeals are dismissed in limine. Civil Application Nos.529 0f 2002 and 709 of 2002 do not survive and the same shall stand disposed as such.

8. Mr. Mujumdar seeks time to hand over the possession of the land. It is noticed that in the first suit the suit land is 4 H. and 15 Rs and in the second suit it is 4 H. and 17 Rs and inspite of the decree of the Lower Appellate Court the defendants are holding the said lands for the last seven years.

9. Two months time to surrender the suit land is hereby granted subject to the condition that in each of the suits an amount of Rs.70,000/- is deposited by way of mesne profits within a period of four weeks from today in the trial court.

(B.H. Marlapalle,J.)